2000

The Board of Education of The Alpine School District v. Property tax Division of the Utah Tax Commission : Response to Petition for Rehearing

Utah Court of Appeals

IN THE COURT OF APPEALS OF THE STATE OF UTAH

THE BOARD OF EDUCATION OF THE ALPINE SCHOOL DISTRICT, Petitioner, vs. PROPERTY TAX DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**RESPONSE OPPOSING UTAH STATE TAX COMMISSION'S PETITION FOR REHEARING** No. 20000109-CA Priority No. 14

Appeal from a Final Decision of the Utah State Tax Commission

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INTRODUCTION

THIS COURT'S OPINION IS PROPER IN SCOPE AND CONTAINS NO MISSTATEMENT OF LAW JUSTIFYING RECONSIDERATION OF THE OPINION.

The Commission has petitioned this Court for rehearing concerning two paragraphs from this Court's decision issued on November 13, 2000, *Alpine School District Board of Education v. State Tax Commission, Property Tax Division*, 2000 UT App 319, based on the Commission's assertion that there are "certain misstatements of the law contained in the Order." (Petition at p. 1.) Although the Commission refers to two paragraphs from the opinion, an examination of the statements to which the Commission points demonstrates that, in fact, there is **no** misstatement of law. Rather, the Commission seeks to massage the language of the opinion to its benefit, substituting its own reasoning and language for that of this court.

In addition, this Court's order properly resolves the issue which Alpine School District presented to the Court: "[W]hether the Division had authority under either section 59-2-914 or section 59-2-924 to lower Alpine's adopted tax rate." 2000 UT App 319 at ¶ 6. The Court further specified that "The issue presented for our review is one of statutory interpretation, which is a question of law, and the Commission has been given no specific grant of discretion to interpret the statutes at issue." *Id.* Because the changes proposed by the Commission exceed the scope of the opinion issued by the Court, they should not be incorporated into the opinion.

B. PARAGRAPH 10 CONTAINS NO MISSTATEMENT AND THE COMMISSION'S PROPOSED CHANGES WOULD GO BEYOND THE SCOPE OF THIS COURT'S RULING.

In seeking rehearing, the Commission first selectively cites to an isolated portion of the language from paragraph 10 of the Court's opinion. However, the statements to which the Commission refers are clear and correct statements of law as applied to this case. In addition, the accuracy of these statements is confirmed by reading them properly **in context**. No change is necessary or warranted.

Citing only to a portion of paragraph 10, the Commission claims it "is concerned that this paragraph suggests that a county may levy a tax rate in excess of the certified rate, if it is below the 'maximum levy.'" (Petition at p. 2.) As its basis, the Commission refers only to the following segment of paragraph 10:

> The statute clearly states that the Division may only lower the tax rate if it exceeds the "maximum levy." See id. § 59-2-914(1)(a). The maximum levy is defined by statute as: ".0032 per dollar of taxable value in all counties with a total taxable value of more than $100,000,000 . . . ." Id. § 59-2-908(1)(a) (1996). The Commission acknowledged during oral argument that Alpine's adopted tax rate does not exceed this figure.

2000 UT App 319 at ¶ 10. However, the Commission's concern is unsubstantiated when the language referred to by the Commission is placed properly in context. The Commission ignores the language immediately preceding the portion cited by the Commission which refers specifically to the truth-in-taxation statutory provisions applicable to Alpine School District. The first three sentences of paragraph 10, to which the Commission makes no reference, refute the Commission's stated concern:

> The Commission found that Alpine **complied with the requirements of sections 59-2-918 and 59-2-919, which require a taxing entity to notify taxpayers of a proposed rate increase in excess of the certified rate, and to hold hearings regarding the increase.** See id. §§ 59-2-918, -919 (1999). This finding notwithstanding, the Commission claims that because the erroneous information the Division had provided Alpine regarding the certified tax rate was then used in the notice to taxpayers during the truth in taxation process, the Division had authority to lower the adopted rate. This interpretation is not consistent with the plain language of the statute.

Id. at ¶ 10 (emphasis added).

In addition, the Commission's proposed change ignores that paragraph 10 sets forth the continuation of this Court's analysis begun in paragraph 9. In paragraph 10 this Court specifically addresses and refutes the assertion argued by the Commission, "that section 59-2-914 gives the Division the authority to reduce Alpine's adopted tax rate." *Id.* at ¶ 9. This Court is correct in holding that the Commission's interpretation of section 59-2-914 "is not consistent with the plain language of the statute" and specifying that "The statute clearly states that the Division may only lower the tax rate if it exceeds the 'maximum levy.'" *Id.* at ¶ 10. What this Court said was in fact correct and no change to paragraph 10 is necessary.

There is **no** mistake in law in this Court's finding that "The statute clearly states that the Division may only lower the tax rate if it exceeds the 'maximum levy'." *Id.* at ¶ 10 (*citing* § 59-2-914(1)(a)). In the next sentence, this Court explains that **in this case**, "The maximum levy is defined by statute as: '.0032 per dollar of taxable value in all counties with a total taxable value of more than $100,000,000 . . . .'" *Id.* at ¶ 10 (*citing*

§ 59-2-908(1)(a)). Again, the Commission cannot challenge the fact that this statement is a correct statement when read in context and applied to the facts of this case.

The Commission's other stated concern is its speculation that "the Court's language as cited above may be inappropriately interpreted in a manner that eviscerates part of the truth-in-taxation statutes." (Petition at p. 3.) However, the Commission's concern that a portion of the Court's opinion may be inappropriately interpreted by someone in the future is a concern inherent in all published opinions. When a party refers only to a selected portion of an opinion, the risk exists that the portion has been cited out of context or for support of a position not adopted by the court. In fact, the Commission's proposed language that "The Commission has authority to adjust **any tax rate** that exceeds the certified rate unless the taxing entity complied with the truth-in-taxation requirements of Utah Code Ann. §§ 918 and 919" is language which goes beyond the scope of the issues considered and the opinion rendered by this Court. The Commission's proposed language would itself create the risk that a party in the future might read this proposed language as authority from this Court that the Commission's authority is much broader than this Court found. The Commission's suggested changes are unnecessary and insert elements beyond the scope of the issues before this Court.

The Commission finally suggests that "the statutes contain maximum rates for many different taxing entities." (Commission Reconsideration Brief at p. 3.) Again, it is clear from the context of the opinion that the court's reference to Utah Cod Ann. § 59-2-908 in defining the "maximum levy" is that which was applicable **in this case**. The

Court's citation is therefore **not** a misstatement of law. The Commission's suggested changes to paragraph 10 are unnecessary and should not be adopted.

B. THE COMMISSION'S PROPOSED REVISION TO PARAGRAPH 13 IS AN UNNECESSARY EFFORT TO MINIMIZE THIS COURT'S PROPER HOLDING.

The Commission questions a portion of paragraph 13, seeking to replace it with its own proposed language. The language questioned from the opinion is as follows:

> We disagree. We cannot conclude that this constitutional provision is self-executing. A self-executing provision is one that "can be judicially enforced without implementing legislation." Spackman v. Board of Educ. of Box Elder County, 2000 UT 87,¶7. As stated by the Utah Supreme Court, "[t]he tax commission is created by statute and has only such powers as the statute confers upon it." E.C. Olsen Co. v. State Tax Comm'n, 109 Utah 563, 168 P.2d 324, 328 (1946).

However, the Commission fails to explain how this language is a misstatement of law. The Commission's constitutional authorization to oversee the state's taxation and general authority to administer and supervise the tax laws of the state does not allow the Commission to defy plain statutory language enacted by the Legislature.

Again, when read in the context of this Court's opinion, it is apparent that this Court recognizes that the Commission is subject to "such limitations as the Legislature may prescribe." *Id.* at 13. In fact, this language is consistent with this Court's prior holding that:

> The Tax Commission, while created by constitutional mandate, **is limited in its power and scope by the Legislature**. According to the Utah Constitution, it is only "[u]nder such regulations in such cases and within such

> limitations as the Legislature may prescribe, [that the Tax Commission] shall review proposed bond issues, revise the tax levies of local governmental units, and equalize the assessment and valuation of properties within the counties."

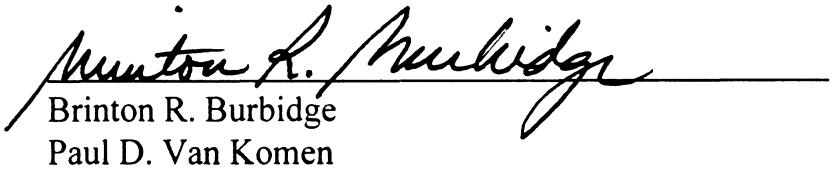
Blaine Hudson Printing v Utah State Tax Commission, 870 P.2d 291, 293 (Utah Ct. App. 1994) (*quoting* Utah Const. art. XIII, § 11, bracketed material in opinion; emphasis added). Neither of the two cases the Commission refers to, *Evans & Sutherland Computer Corp. v. Utah State Tax Commission*, 953 P.2d 435 (Utah 1997) and *Mountain States Tel. & Tel. Co. v. Garfield County*, 811 P.2d 184 (Utah 1991), conflicts with this Court's opinion. Therefore, the Commission's proposed changes to paragraph 13 are unnecessary and should not be adopted.

II. CONCLUSION

Because there is no error of law in this Court's opinion, and because that opinion clearly sets forth the Court's holding in this case, no rehearing is necessary or warranted.

RESPECTFULLY SUBMITTED this 13 TH day of December 2000.

BURBIDGE, CARNAHAN, OSTLER & WHITE



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CERTIFICATE OF SERVICE

I hereby certify that on the 13TH day of December 2000, I caused to be served by the method indicated below a true and correct copy of the attached and foregoing **RESPONSE OPPOSING UTAH STATE TAX COMMISSION'S PETITION FOR REHEARING** to the following:

___ VIA FACSIMILE
___ VIA HAND DELIVERY
X VIA U.S. MAIL
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